

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**FIRST APPEAL No. 59 of 1987****For Approval and Signature:****HONOURABLE MR.JUSTICE M.R. SHAH**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?

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KISHNA VIRCHAND & 3 - Appellant(s)
Versus
PRASAD MILLS LTD. - Defendant(s)

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Appearance :

MRS SIDDHI D TALATI for Appellant(s) : 1, 1.2.1,1.2.2 - 4, 4.2.1, 4.2.2, 4.2.3, 4.2.4, 4.2.5, 4.2.6, 4.2.7, 4.2.8, 4.2.9, 4.2.10, 4.2.11, 4.2.12,4.2.13
 None for Defendant(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH**Date : 02/08/2006****ORAL JUDGMENT**

1. By way of this appeal, the appellants – original defendants (hereinafter referred to as “the

defendants") have challenged the legality and validity of the judgment and decree passed by the learned City Civil Court, Ahmedabad, dated 20th October, 1986 passed in Civil Suit No. 3261 of 1981 in decreeing the said suit directing the appellants – original defendants to vacate the portion of land in question on which they have committed encroachment and they are further directed to hand over the clear and vacant possession of the said land to the plaintiff.

2. The original plaintiff – Public Limited Company filed Civil Suit No. 3261 of 1981 in the learned City Civil Court, Ahmedabad, for recovering vacant possession of the land, which was encroached upon by the defendants. It was averred in the plaint that the plaintiff was in possession of the land bearing Survey No. 5002 situated in the Prasad Mill Compound near Victoria Garden in the City of Ahmedabad and the said compound was being used by the employees and workers of the Mill. It was also further averred that certain rooms were situated in the

western side of the compound, which were in possession of the tenants and on eastern side of the compound, there were three premises, a cycle, scooter stand and lavatory blocks. It was further averred that the defendant No.1 was in possession of the premises bearing M.C. No. 2058 and the defendant Nos.2 and 3 were in possession of the premises bearing M.C. No.2058/1 and the defendant No.4 was in possession of the premises bearing M.C. No. 2058/2 as tenants of the plaintiff. It was further submitted that each of the aforesaid premises consisted of one room, one osari and some open space. All the aforesaid rooms were in one row and the front open portion of all the three premises was one continuous piece of land and after the said open piece of land, the plaintiff had put up a wire fencing and thereafter one shed was constructed for parking scooters and cycles. It was further averred that below the shed, there was a required flooring and keeping in view the fact that the caves of the shed may not fall into the open space, rented out to the defendants, a 3

feet broad strip of road was left between the wire fencing and the flooring below the shed, so that the water from the caves of the shed may fall on the open strip of the land inside the wire fencing. It was further averred that the defendants in collusion with each other and with mala-fide intention of widening the front open land, which was in their occupation, removed the wire fencing more towards the western side, so that the open strip of land, which was left between the wire fencing and the flooring below the scooter stand would merged with the open land in front of their tenanted premises and the wire fencing was removed near the edge of the flooring and in the said manner, the defendants encroached upon the strip of land, which was 3 feet wide and 30 feet long in front of their premises. It was submitted that a criminal complaint was also filed, but the same was filed by the Police on the ground that the defendants were the tenants of the plaintiff and therefore, the plaintiff prayed that the defendants should be directed to remove the encroachment and that

the vacant possession thereof should be given to the plaintiff. It was also further prayed that they should be allowed to put up the wire fencing as well as small wall at the original place and that the defendants should be restrained from causing any interference to the plaintiff in so putting up the fencing and the wall and the defendants should be further restrained from demolishing or removing such fencing or wall, which may be put up by the plaintiff.

3. The suit was resisted by the defendants. The written statement was filed on behalf of the defendant Nos.1,2 and 3 at Exh.11 and on behalf of defendant No.4 at Exh.12. The allegations made in the suit were denied and it was denied that they have encroached upon the open piece of land as alleged. It was further submitted that open space in front of the suit premises was being used by the defendants and other persons since many years. It was further submitted that the shed has been constructed illegally by the

plaintiff and it was also denied that there was a strip of land, 3 feet wide between the flooring and the otta.

4. The learned trial Court raised the issues. One Maneklal Chimanlal was examined on behalf of the plaintiff at Exh.28. Only two persons were examined on behalf of the defendants, i.e. one the widow of the defendant No.1 and another the defendant No.2 at Exhs. 46 and 45 respectively. On appreciation of evidence, the learned trial Court held that the plaintiff has proved that the defendants have committed encroachment upon the 3 feet wide and 30 feet long road belonging to it on the western side of the premises occupied by the defendants and consequently, the learned trial Court held that the plaintiff is entitled to obtain a decree of possession of the encroached open piece of land from the defendants and that the plaintiff is also entitled to the permanent injunction, as prayed for and accordingly, decreed the suit. Being aggrieved and dissatisfied with the same, the

defendants have preferred the present First Appeal.

5. The learned counsel appearing on behalf of the appellants is absent. As this being a matter of the year 1987, this Court decided the matter ex-parte on merits in absence of the learned counsel appearing on behalf of the appellants. From the appeal memo, it appears that it is the contention on behalf of the appellants that the learned trial Court has erred in not considering the contentions taken in the rent-note and their possession as a tenants of the disputed land. It was also submitted that the learned trial Court has not properly appreciated the evidence of Bai Dhuli and Bai Dhani at Exhs.45 and 46 respectively. This Court has gone through the evidence at Exhs.45 and 46 and this Court has also considered the evidence/deposition of one Maneklal Chimanlal, who was examined on behalf of the plaintiff. It was stated by Shri Maneklal Chimanlal that one room and osari was given on rent to the defendants and the open space was

used by the defendants only for ingress and egress. He has also further submitted that wire fencing was put up between the rented premises and the cycle stand and that the open space was left between wire fencing and cycle stand so that, the eaves of the shed over the cycle stand may not fall into the space of the defendants and according to him, the open space left between the wire fencing and cycle stand was 30 feet long and 3 feet wide. Nothing has been borne out adverse to the plaintiff in cross-examination. On going through the map at Exh.29, 6 feet space is found between the original position of the fencing and the rented premises. It was the contention on behalf of the defendants that they were provided 6 feet wide otta, but the said defendant has not entered into the witness-box. There is no consistency in the depositions of Bai Dhani and Bai Dhuli at Exhs. 46 and 45 so far as width of the otta is concerned. Even Bai Dhuli has also admitted in her cross-examination that the open space was provided along with one room and osari and that

the open space was 6 feet wide on which, they had put up an otta. She has also admitted that no open space except the otta, apart from room and osari, was given on rent. Now, considering the aforesaid evidence/deposition, the learned trial Court has rightly held that the open space in front of the premises was not rented to the defendants and they have encroached upon the same. The learned trial Court has rightly passed a decree directing the defendants to vacate the portion of the land shown in red marks in the map at Exh.29 on which, the defendants have committed encroachment i.e front portion of the rooms occupied by them and the learned trial Court has rightly directed the defendants to hand over the clear and vacant possession of the same to the plaintiff. On considering evidence on record, it cannot be said that the decree passed by the learned trial Court is contrary to the evidence on record. On going through the evidence of Bai Dhani, it is very clear that the defendants have encroached upon the portion of the land in front of their rooms-osari and

therefore, the learned trial Court has rightly passed the decree. This Court is in complete agreement with the reasoning and findings of the learned trial Court.

6. For the reasons stated above, the appeal fails and is required to be dismissed and is, accordingly, dismissed. Interim relief, if any, granted earlier, stands vacated forthwith. However, there shall be no order as to costs.

[M.R.SHAH, J.]

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